

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Dean Myslivecek, *et al.*,

Plaintiffs,

Case No. 21-10346

v.

Judith E. Levy  
United States District Judge

FCA US LLC,

Defendant.

Mag. Judge Elizabeth A.  
Stafford

\_\_\_\_\_/

**ORDER DENYING WITHOUT PREJUDICE AS MOOT  
DEFENDANT'S MOTION TO DISMISS [8]**

Plaintiff Dean Myslivecek filed an initial putative class action complaint on February 16, 2021, against Defendant FCA US LLC. (ECF No. 1.) On April 12, 2021, Defendant filed a motion to dismiss the class action complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (ECF No. 8.) Plaintiff Myslivecek then filed an amended complaint exactly twenty-one days later, on May 3, 2021. (ECF No. 11.) Plaintiff Myslivecek's amended complaint added four new named Plaintiffs: Paul Caputo, Christopher Chow, Michael Busovicki, and Kevin

Schaffner. (*Id.* at PageID.160–163.) No additional defendants were added. (*Id.*)

Without expressing any view as to whether the amended complaint cures the purported deficiencies claimed in the motion to dismiss, the Court DENIES WITHOUT PREJUDICE AS MOOT Defendant’s motion to dismiss in light of the filing of the amended complaint. “[A]n amended complaint supersedes all prior complaints.” *Drake v. City of Detroit*, 266 Fed. App’x. 444, 448 (6th Cir. 2008). “It follows that ‘motions directed at the superseded pleading,’” such as Defendant’s motion here, “generally are to be denied as moot.” *Nails v. RPI-Section 8 Housing*, 2019 WL 1112381, at \*4 (E.D. Mich. Mar. 11, 2019) (quoting *Heard v. Strange*, 2018 WL 4189652, at \*2 (E.D. Mich. June 21, 2018)) (collecting cases) report and recommendation adopted, 2018 WL 4184633 (E.D. Mich. Aug. 31, 2018); *see also Braden v. United States*, 817 F.3d 926, 930 (6th Cir. 2016) (“An amended pleading supersedes a former pleading if the amended pleading is complete in itself and does not refer to or adopt a former pleading.”) (internal quotation marks omitted).

Plaintiffs filed their first amended complaint by right. Fed. R. Civ. P. 15(a)(1)(B) (a complaint may be amended as of right once within 21

days of the filing of a motion to dismiss). The first amended complaint is complete in itself and makes no reference to the initial complaint. Accordingly, Defendant is directed to file a responsive pleading to the amended complaint within 30 days of this order.

IT IS SO ORDERED.

Dated: May 4, 2021  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 4, 2021.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager